APPENDIX I

INAPPLICABLE PRIVATE-SECTOR PROVISIONS OF THE LAWS MADE APPLICABLE BY THE CAA

This table describes significant statutory provisions that are contained in the laws made applicable by the CAA (the "CAA laws") and that apply in the private sector, but that do not apply fully to the legislative branch. "Apply" means that a provision is referenced and incorporated by the CAA, or a substantially similar provision is set forth in the CAA, or the provision applies to the legislative branch by its own terms without regard to the CAA. Whether provisions apply to GAO, GPO, and the Library of Congress is not discussed in this table, but is analyzed in the tables contained in Appendix III of this Report.

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TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 ("TITLE VII") and 42 U.S.C. §§ 1981, 1981a

A. SUBSTANTIVE RIGHTS AND PROTECTIONS	
1. Employment discrimination against individuals employed by other employers. § 703(a)(1) of Title VII forbids employment discrimination by covered employers against "any individual." Courts have held that this prohibition extends beyond the immediate employer-employee relationship under certain circumstances, including where a defendant who does not employ an individual controls that individual's access to employment with another employer and denies access based on unlawful criteria.[1] Under the CAA, an employing office may only be charged with discrimination by a "covered employee," defined as an employee of the nine legislative-branch employers listed in § 101(3) of the CAA.	Secs. 703(a)(1) *42 U.S.C.* *§§ 2000e–2(a)(1)*
2. Publication of discriminatory notices or advertisements. Publication of discriminatory notices or advertisements is prohibited under § 704(b) of Title VII. Under the CAA, a notice or advertisement might be evidence of discriminatory animus, but § 704(b) of Title VII, which makes unlawful the mere publication of a discriminatory notice or advertisement, is not referenced by the CAA.	Sec. 704(b) *42 U.S.C.* *§ 2000e–3(b)*
3. Coverage of unions. Discrimination by private-sector unions is forbidden by §§ 703(c) and 704 of Title VII and is subject to enforcement under § 706. The CAA does not make these provisions applicable against unions discriminating against legislative branch employees, because § 201 of the CAA forbids discrimination only in "personnel actions" and §§ 401-408 of the CAA allow complaints only against employing offices. (Unlawful discrimination by a union may be an unfair labor practice under § 220 of the CAA, but the procedures and remedies under that section are very different from those under Title VII and under the CAA for violations of Title VII rights and protections.) A similar situation exists in the executive branch, where § 717 of Title VII does not cover discrimination by unions against executive branch employees, but courts and the EEOC are divided as to whether the private-sector provisions of Title VII and 42 U.S.C. § 1981 apply by their own terms to such discrimination. *See generally* II LINDEMANN & GROSSMAN, EMPLOYMENT DISCRIMINATION LAW 1320, 1575 (3d ed. 1996). Similarly, differing views might be expressed with respect to whether these private-sector provisions apply by their own terms to forbid discrimination by unions against legislative-branch employees.	Secs. 703(c), 704, 706 *42 U.S.C.* *§§ 2000e–2(c), 2000e–3, 2000e–5*

[1] *See, e.g., Sibley Memorial Hosp. v. Wilson*, 488 F.2d 1338, 1341 (D.C. Cir. 1973) ("nowhere are there words of limitation that restrict references in the Act to 'any individual' as comprehending only an employee of the employer," nor could the court perceive "any good reason to confine the meaning of 'any individual' to include only former employees and applicants for employment, in addition to present employees"); *Moland v. Bil-Mar Foods*, 994 F.Supp. 1061, 1075 (N.D. Iowa 1998) (interlocutory appeal certified) (trucking company's employee assigned to scale house on processing-plant premises could maintain sex discrimination complaint against processing company); *King v. Chrysler Corp.*, 812 F.Supp. 151, 153 (E.D. Mo. 1993) (cashier employed by cafeteria on automobile manufacturer's premises need not be employee of manufacturer to sue manufacturer under Title VII); *Pelech v. Klaff-Joss, L.P.*, 815 F.Supp. 260, 263 (N.D. Ill. 1993) (cleaning company and its chairman held potentially liable under Title VII for causing a high-rise building to fire a security guard).

4. Consideration of political party, domicile, or political compatibility. Under the CAA, § 502 provides that consideration of political party, domicile, or political compatibility by Members, committees, or leadership offices shall not be a violation of § 201, which is the section that makes applicable the rights and protections of Title VII. Under Title VII, there is no specific immunity for consideration of political party, domicile, or political compatibility.	Sec. 703 *42 U.S.C. § 2000e–2*
B. ENFORCEMENT	
AGENCY ENFORCEMENT AUTHORITIES	
5. Agency responsibility to investigate charges filed by an employee or Commission Member. Title VII requires the EEOC to investigate charges filed by either an employee or a Member of the Commission. The CAA neither references these provisions nor sets forth similar provisions authorizing agency investigation.	Sec. 706(b) *42 U.S.C. § 2000e–5(b)*
6. Agency responsibility to "endeavor to eliminate" the violation by informal conciliation. Title VII requires that, upon the filing of a charge, if the EEOC determines that "there is reasonable cause to believe that the charge is true," the agency must "endeavor to eliminate any such alleged unlawful employment practice" by informal conference, conciliation, and persuasion. The CAA does not reference these provisions; it requires the mediation of allegations of discrimination and requires approval of settlements by the Executive Director, but does not require any person involved in the mediation or in approving the settlement to "endeavor to eliminate" the alleged discrimination.	Sec. 706(b) *42 U.S.C. § 2000e–5(b)*
7. Agency authority to bring judicial enforcement actions. Title VII authorizes the EEOC to bring a civil action. The CAA neither references these provisions nor sets forth similar provisions authorizing an agency to bring enforcement proceedings.	Sec. 706(f)(1) *42 U.S.C. § 2000e–5(f)(1)*
8. Agency authority to intervene in private civil action of general public importance. Under Title VII, the EEOC may intervene in a private action of general public importance. The CAA neither references these provisions nor sets forth similar provisions authorizing an agency to intervene in private actions.	Sec. 706(f)(1) *42 U.S.C. § 2000e–5(f)(1)*
9. Agency authority to apply to court for enforcement of judicial orders. Title VII authorizes the EEOC to commence judicial proceedings to compel compliance with judicial orders. The CAA does not reference these provisions. § 407(a)(2) of the CAA enables the Office of Compliance to petition the Court of Appeals to enforce final orders of a hearing officer or the Board, but the CAA sets forth no provision enabling an agency to seek the enforcement of judicial orders.	Sec. 706(i) *42 U.S.C. § 2000e–5(i)*

10.	**Grant of subpoena power and other powers for investigations and hearings.** Title VII grants the EEOC powers to gain access to evidence, including subpoena powers, in support of its investigations and hearings. The CAA neither references these provisions nor sets forth similar provisions granting an agency investigatory powers. (§ 405(f) of the CAA grants subpoena powers to hearing officers, and § 408 authorizes civil actions in which courts may issue subpoenas, but these CAA provisions do not subpoena powers for use in agency investigation.)	Secs. 709(a), 710 *42 U.S.C. §§ 2000e–8(a), 2000e–9*
11.	**Recordkeeping and reporting requirements.** Title VII requires employers in the private sector to make and preserve such records and make such reports therefrom as the EEOC shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for enforcement. The CAA does not reference these provisions, and the Board, in issuing substantive regulations with respect to several other laws, found that recordkeeping and reporting requirements under those laws were not made applicable by the CAA.	Sec. 709(c) *42 U.S.C. § 2000e–8(c)*
	ADMINISTRATIVE AND JUDICIAL PROCEDURES AND REMEDIES	
12.	**Suing individuals as agent; possibility of individual liability.** Because the definition of "employer" in Title VII includes "any agent," a plaintiff may choose to sue the employer by naming an appropriate individual in the capacity of agent. Furthermore, while many recent cases hold that individuals may not be held individually liable in discrimination cases, some cases hold to the contrary and the issue remains unresolved. *See generally* II LINDEMANN & GROSSMAN, EMPLOYMENT DISCRIMINATION LAW 1314-16 (3d ed. 1996). Under the CAA, individuals may be neither sued nor held individually liable, because only an employing office may be named as respondent or defendant under §§ 401-408 and all awards and settlements must generally be paid out of an account of the Office of Compliance under § 415(a).	Sec. 701(b) *42 U.S.C. § 2000e(b)*
13.	**Enforceability of subpoenas for information or documents within the jurisdiction of the House or Senate.** Title VII authorizes civil actions in which courts exercise their ordinary subpoena authority. The CAA also authorizes civil actions, as well as administrative adjudications, but such authorization is subject to § 413 of the CAA, by which the House and Senate decline to waive "any power of either the Senate or the House of Representatives under the Constitution," including under the "Journal of Proceedings Clause," and under the rules of either House relating to records and information.	Sec. 706(f)(1) *42 U.S.C. § 2000e–5(f)(1)*
14.	**Appointment of counsel and waiver of fees.** § 706(f)(1) of Title VII authorizes the court to appoint an attorney for the complainant in a private action and to waive costs. The CAA does not reference § 706(f)(1). In judicial proceedings under the CAA, the courts may exercise their general powers to authorize proceedings *in forma pauperis* and waive fees and costs and appoint counsel if a party is unable to pay. *See* 28 U.S.C. § 1915. In administrative proceedings under the CAA, there are no fees and costs to waive, but there is also no power to appoint counsel.	Sec. 706(f)(1) *42 U.S.C. § 2000e–5(f)(1)*

15. Agency authority to apply for TRO or preliminary relief. § 706(f)(2) of Title VII authorizes the EEOC to bring an action for a temporary restraining order ("TRO") or preliminary relief pending resolution of a charge. The CAA neither references § 706(f)(2) nor sets forth similar provisions authorizing TROs or preliminary relief, and the CAA does not allow a covered employee to commence an administrative complaint or civil action until after having completed periods of counseling and mediation and an additional period of at least 30 days.	Sec. 706(f)(2) *42 U.S.C. § 2000e–5(f)(2)*
16. Private right to sue immediately, without having exhausted administrative remedies. An employee alleging race or color discrimination who prefers not to pursue a remedy through the EEOC may choose to sue immediately under 42 U.S.C. § 1981. The CAA allows a covered employee to file an administrative complaint or commence a civil action only after having completed periods of counseling and mediation and an additional period of at least 30 days.	42 U.S.C. § 1981
DEFENSE	
17. Defense for good faith reliance on agency interpretations. § 713(b) of Title VII provides a defense for an employer who relies in good faith on an interpretation by the EEOC. The CAA does not specifically reference § 713(b), but the Board decided that a similar defense in the Portal-to-Portal Act ("PPA") was incorporated into § 203 of the CAA and applies where an employing office relies on an interpretation of the Wage and Hour Division.	Sec. 713(b) *42 U.S.C. § 2000e–12(b)*
PUNITIVE DAMAGES	
18. Punitive damages. 42 U.S.C. § 1981a(b)(1) authorizes punitive damages in cases under Title VII where malice or reckless indifference is demonstrated, and under 42 U.S.C. § 1981 punitive damages may be warranted in cases of race or color discrimination. However, § 1981a(b)(1) is not referenced by the CAA at all, and § 1981 is referenced by § 201(b)(1)(B) of the CAA with respect to the awarding of "compensatory damages" only; furthermore, § 225(c) of the CAA expressly precludes the awarding of punitive damages.	42 U.S.C. §§ 1981, 1981a(b)(1)
C. OTHER AGENCY AUTHORITIES	
19. Notice-posting requirements. Title VII requires employers, employment agencies, and unions to post notices prepared or approved by the EEOC, and establishes fines for violation. The CAA does not reference these provisions, and the Board, in issuing substantive regulations with respect to several other laws, found that notice-posting requirements under those laws were not incorporated by the CAA.	Sec. 711 *42 U.S.C. § 2000e–10*

20.	**Authority to issue interpretations and opinions.** § 713(b) of Title VII establishes a defense for good-faith reliance on "any written interpretation and opinion" of the EEOC, and the EEOC has established a process by which "[a]ny interested person desiring a written title VII interpretation or opinion from the Commission may make such a request." 29 C.F.R. § 1601.91 *et seq*. The CAA does not reference § 713(b) specifically. Furthermore, as noted on page 4, row 17, above, the Board decided that the defense for good-faith reliance stated in the PPA, which is similar to the defense in § 713(b), was incorporated into § 203 of the CAA; but the Board also then stated that "it seems unwise, if not legally improper, for the Board to set forth its views on interpretive ambiguities in the regulations outside of the adjudicatory context of individual cases," and "the Board would in the exercise of its considered judgment decline to provide authoritative opinions to employing offices as part of its 'education' and 'information' programs." 142 CONG. REC. S221, S222-S223 (daily ed. Jan. 22, 1996).	Sec. 713(b) *42 U.S.C.* *§ 2000e–12(b)*

AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 ("ADEA")

A. SUBSTANTIVE RIGHTS AND PROTECTIONS	
1. Employment discrimination against individuals employed by other employers. § 4(a)(1) of the ADEA forbids employment discrimination by covered employers against "any individual." As discussed at page 1, row 1, above, courts have held that a Title VII provision forbidding discrimination against "any individual" extends beyond the immediate employer-employee relationship under certain circumstances, including where a defendant who does not employ an individual controls that individual's access to employment with another employer and denies access based on unlawful criteria. Under the CAA, an employing office may only be charged with discrimination by a "covered employee," defined as an employee of the nine legislative-branch employers listed in § 101(3).	Sec. 4(a)(1) *29 U.S.C. § 623(a)(1)*
2. Reduction of wages to achieve compliance. § 4(a)(3) of the ADEA forbids employers in the private sector to reduce the wage rate of any employee in order to comply with the ADEA. § 4(a)(3) is not referenced by the CAA, and § 15 of the ADEA, which is referenced by § 201(a)(2) of the CAA, contains a subsection (f) that specifically precludes the application of any provision outside of § 15.	Sec. 4(a)(3) *29 U.S.C. § 623(a)(3)*
3. Publication of discriminatory notices or advertisements. Publication of discriminatory notices or advertisements is prohibited by § 4(e) of the ADEA. Under the CAA, a notice or advertisement might be evidence of discriminatory animus, but § 4(e) of the ADEA, which makes unlawful the mere publication of a discriminatory notice or advertisement, is not referenced by the CAA, and § 15 of the ADEA, which is referenced by § 201(a)(2) of the CAA, contains a subsection (f) that specifically precludes the application of any provision outside of § 15.	Sec. 4(e) *29 U.S.C. § 623(e)*
4. Coverage of unions. § 4(c)-(e) of the ADEA forbids discrimination by unions in the private sector, and these provisions may be enforced against private-sector unions under § 7 of the ADEA. The CAA does not make these provisions applicable to unions discriminating against legislative branch employees, because § 201 of the CAA only forbids discrimination in "personnel actions" and §§ 401-408 allow complaints only against employing offices. (Unlawful discrimination by a union may be an unfair labor practice under § 220 of the CAA, but the procedures and remedies under that section are very different from those under the ADEA and under the CAA for violations of ADEA rights and protections.) As noted at page 1, row 3, above, a similar situation exists in the executive branch, where § 717 of Title VII does not cover discrimination by unions against executive branch employees, but courts and the EEOC are divided as to whether the private-sector provisions of Title VII and 42 U.S.C. § 1981 apply by their own terms to such discrimination. Similarly, differing views might be expressed with respect to whether the private-sector provisions of the ADEA apply by their own terms to forbid discrimination by unions against legislative-branch employees.	Secs. 4(c)-(e), 7 *29 U.S.C. §§ 623(c)-(e), 626*

5. Mandatory retirement for state and local police forces. § 4(j) of the ADEA allows age-based hiring and firing of state and local law enforcement officers. The CAA does not reference § 4(j) of the ADEA, and § 15 of the ADEA, which is referenced by § 201(a)(2) of the CAA, contains a subsection (f) that specifically precludes the application of any provision outside of § 15. Furthermore, the CAA does not contain any provisions similar to § 4(f) of the ADEA providing an exception for the Capitol Police. However, the Capitol Police Retirement Act ("CPRA"), 5 U.S.C. § 8425, imposes age-based mandatory retirement for Capitol Police Officer. The CAA does not state expressly whether it repeals the CPRA, but the Federal Circuit held that the application of ADEA rights and protections by the Government Employee Rights Act, a predecessor to the CAA that applied certain rights and protections to the Senate, did not implicitly repeal the CPRA. *Riggin v. Office of Senate Fair Employment Practices*, 61 F.3d 1563 (Fed. Cir. 1995).	Sec. 4(j) *29 U.S.C. § 623(j)*
6. State and local police officers' entitlement to job-performance testing to continue employment after retirement age. Under § 4(j) of the ADEA, after a study and rulemaking by the Labor Secretary are completed, state and local law enforcement officers who exceed mandatory retirement age will become entitled to an annual opportunity to demonstrate job fitness to continue employment. The CAA does not reference § 4(j) of the ADEA, and § 15 of the ADEA, which is referenced by § 201(a)(2) of the CAA, contains a subsection (f) that specifically precludes the application of any provision outside of § 15. (Whether the Capitol Police remain subject to mandatory retirement at all is discussed in row 5 above.)	Sec. 4(j) *29 U.S.C. § 623(j)*
7. Age-based mandatory retirement of executives and high policy-makers. § 12(c) of the ADEA allows aged-based mandatory retirement for *bona fide* executives and high policy-makers in the private sector. The CAA does not reference § 12(c) of the ADEA, and § 15 of the ADEA, which is referenced by § 201(a)(2) of the CAA, contains a subsection (f) that specifically precludes the application of any provision outside of § 15.	Sec. 12(c) *29 U.S.C. § 631(c)*
8. Consideration of political party, domicile, or political compatibility. Under the CAA, § 502 provides that consideration of political party, domicile, or political compatibility by Members, committees, or leadership offices shall not be a violation of § 201, which is the section that makes applicable the rights and protections of the ADEA. Under the ADEA, there is no specific immunity for consideration of political party, domicile, or political compatibility.	Sec. 4 *29 U.S.C. § 623*
B. ENFORCEMENT	
AGENCY ENFORCEMENT AUTHORITIES	
9. Grant of subpoena power and other powers for investigations and hearings. The ADEA grants the EEOC subpoena and other investigatory powers for use in investigations and hearings. The CAA neither references these provisions nor sets forth similar provisions granting an agency investigatory powers. (§ 405(f) of the CAA grants subpoena powers to hearing officers, and § 408 authorizes civil actions in which courts may issue subpoenas, but these CAA provisions do not grant subpoena powers for use in agency investigation.)	Sec. 7(a) *29 U.S.C. § 626(a)*, *referencing § 9 of FLSA*, *29 U.S.C. § 209*

10.	**Authority to receive and investigate charges and complaints and to conduct investigations on agency's initiative.** Under authority of § 7 of the ADEA, the EEOC investigates employee charges of ADEA violations and initiates investigations on its own initiative. The CAA neither references these provisions nor sets forth similar provisions authorizing agency investigations.	Sec. 7(a), (d) *29 U.S.C. § 626(a), (d)*, *and referencing* § 11(a) of FLSA, *29 U.S.C. § 211(a)*
11.	**Recordkeeping and reporting requirements.** The ADEA empowers the EEOC to require the keeping of necessary and appropriate records in accordance with the powers in § 11 of the FLSA. That section requires employers in the private sector to make and preserve such records and make such reports therefrom as the agency shall prescribe by regulation or order as necessary or appropriate for enforcement. EEOC regulations specify the "payroll" records that employers must maintain and preserve for at least 3 years and the "personnel or employment" records that employers must maintain and preserve for at least 1 year. 29 C.F.R. § 1627.3. EEOC regulations further require that each employer "shall make such extension, recomputation or transcriptions of his records and shall submit such reports concerning actions taken and limitations and classifications of individuals set forth in records" as the EEOC or its representative may request in writing. 29 C.F.R. § 1627.7. The CAA does not reference these provisions, and the Board, in issuing substantive regulations with respect to several other laws, found that recordkeeping and reporting requirements under those laws were not made applicable by the CAA.	Secs. 7(a) *29 U.S.C. § 626(a)*, *referencing* § 11(c) of FLSA, *29 U.S.C. § 211(c)*
12.	**Agency authority to bring judicial enforcement actions.** The ADEA authorizes the EEOC to bring an action in district court seeking damages, including liquidated damages, and injunctive relief. The CAA neither references these provisions nor sets forth similar provisions authorizing an agency to bring enforcement proceedings.	Sec. 7(b) *29 U.S.C. § 626(a)*, *referencing* §§ 16(c), 17 of FLSA, *29 U.S.C. §§ 216(c), 217*
13.	**Agency responsibility to "seek to eliminate" the violation.** The ADEA requires that, upon receiving a charge, the EEOC must "seek to eliminate any alleged unlawful practice" by informal conference, conciliation, and persuasion, and, before instituting a judicial action, the agency must use such conciliation to "attempt to eliminate the discriminatory practice or practices and to effect voluntary compliance." The CAA does not reference these provisions; it requires the mediation of allegations of discrimination and requires approval of settlements by the Executive Director, but does not require any person involved in the mediation or in approving the settlement to determine "reasonable cause" or to "endeavor to eliminate" the alleged discrimination.	Sec. 7(b), (d) *29 U.S.C. § 626(b), (d)*
	ADMINISTRATIVE AND JUDICIAL PROCEDURES AND REMEDIES	
14.	**Enforceability of subpoenas for information or documents within the jurisdiction of the House or Senate.** The ADEA authorizes civil actions in which courts exercise their ordinary subpoena authority. The CAA also authorizes civil actions, as well as administrative adjudications, but such authorization is subject to § 413 of the CAA, by which the House and Senate decline to waive certain powers relating to records and information, as discussed in connection with Title VII at page 3, row 13, above.	Sec. 7(b)-(c) *29 U.S.C. § 626(c)*, *referencing* § 16(b)-(c) of FLSA, *29 U.S.C. § 216(b)-(c)*

15. Suing individuals as agent; possibility of individual liability. Because the definition of "employer" in the ADEA includes any agent, a plaintiff may choose to sue the employer by naming an individual in the capacity of agent. Furthermore, as noted with respect to Title VII at page 3, row 12, above, while many recent cases hold that individuals may not be held individually liable in discrimination cases, some courts hold to the contrary and the issue remains unresolved. Under the CAA, however, individuals may be neither sued nor held individually liable, because only an employing office may be named as respondent or defendant under §§ 401-408 and all awards and settlements must generally be paid out of an account of the Office of Compliance under § 415(a).	Sec. 11(b) *29 U.S.C. § 630(b)*
DEFENSE	
16. Defense for good faith reliance on agency interpretations. § 7(e) of the ADEA provides that § 10 of the Portal-to-Portal Act ("PPA") shall apply to actions under the ADEA, and § 10 of the PPA establishes a defense for an employer who relies in good faith on an interpretation by the EEOC. However, the CAA does not reference § 7(e) of the ADEA, and § 15 of the ADEA, which is referenced by § 201(a)(2) of the CAA, contains a subsection (f) that specifically precludes the application of provisions outside of § 15. The ADEA thus differs from Title VII, as discussed at page 4, row 17, above, because the Title VII provisions referenced by the CAA contain no provision like ADEA § 15(f) precluding the application of other statutory provisions.	Sec. 7(e) *29 U.S.C. § 626(e)*, *referencing* § 10 of PPA, *29 U.S.C. § 259*
DAMAGES	
17. Liquidated damages for retaliation. § 4(d) of the ADEA forbids discrimination against employees for exercising ADEA rights, and § 7(b) of the ADEA provides that liquidated damages, in an amount equal to the amount otherwise owing because of a violation, shall be payable in cases of willful violations. Under the CAA, § 201(a)(2)(B) incorporates "such liquidated damages as would be appropriate if awarded under § 7(b) of [the ADEA]," but only for "a violation of subsection (a)(2)." § 201(a)(2) does not reference § 4(d) of the ADEA, but rather, § 201(a)(2) prohibits discrimination within the meaning of § 15 of the ADEA, 29 U.S.C. § 633a, and § 15 does not prohibit retaliation either expressly or by implication. *See Tomasello v. Rubin*, 920 F. Supp. 4 (D.D.C. 1996); *Koslow v. Hundt*, 919 F. Supp. 18 (D.D.C. 1995). Retaliation is prohibited by § 207(a) of the CAA, but the remedy under § 207(b) is "such legal or equitable remedy as may be appropriate," with no express authority to award liquidated damages.	Secs. 4(d), 7(b) *29 U.S.C. §§ 623(d), 626(b)*, *including reference* to § 16(b) of FLSA, *29 U.S.C. § 216(b)*

C. OTHER AGENCY AUTHORITIES	
18. **Authority to issue written interpretations and opinions.** § 7(e) of the ADEA, referencing § 10 of the PPA, establishes a defense for good-faith reliance on "any written administrative regulation, order, ruling, approval, or interpretation" of the EEOC, and the EEOC has established a process by which a request for an opinion letter may be submitted to the Commission. *See* 29 C.F.R. §§ 1626.17-1626.18. However, as noted at page 9, row 16, above, the CAA does not reference § 7(e). Furthermore, as discussed in connection with Title VII at page 5, row 20, above, the Board has decided that the PPA defense was incorporated into § 203 of the CAA, but that the Board would not provide authoritative interpretations and opinions outside of adjudicating individual cases.	Sec. 7(e) *29 U.S.C. § 626(e)*, *referencing* § 10 of PPA, *29 U.S.C. § 259*
19. **Notice-posting requirements.** The ADEA requires employers, employment agencies, and unions to post notices prepared or approved by the EEOC. The CAA does not reference these provisions, and the Board, in issuing substantive regulations as to several other laws, found that notice-posting requirements under those laws were not incorporated by the CAA.	Sec. 8 *29 U.S.C. § 627*
20. **Substantive rulemaking authority.** Under § 9 of the ADEA, the EEOC promulgates substantive as well as procedural regulations applicable to the private sector. § 9 is not referenced by the CAA, and § 201 of the CAA, unlike most other CAA sections, does not require that the Board adopt implementing regulations. § 304 of the CAA, which establishes the process by which the Board adopts substantive regulations, specifies that such regulations "shall include regulations the Board is required to issue under title II [of the CAA]," but does not state explicitly whether the Board has authority to promulgate regulations, at its discretion, that the Board is not required to issue. Furthermore, § 201(a)(2) of the CAA references § 15 of the ADEA, which, in subsection (b), requires the EEOC to issue regulations, orders, and instructions applicable to the executive branch and requires each federal agency covered by § 15 to comply with them. The CAA does not state expressly whether the reference to § 15 makes subsection (b) of that section applicable, and, specifically, whether employing offices must comply with regulations, orders, and instructions promulgated by the EEOC under § 15(b), or whether the Board can exercise the authority of the EEOC under § 15(b) to issue regulations, orders, and instructions binding on employing offices.	Sec. 9 *29 U.S.C. § 628*
21. **Authority to grant "reasonable exemptions" in the "public interest."** With respect to the private sector, § 9 of the ADEA authorizes the EEOC to establish "reasonable exemptions" from the ADEA "as it may find necessary and proper in the public interest." § 9 is not referenced by the CAA, and § 15 of the ADEA, which is referenced by § 201(a)(2) of the CAA, contains a subsection (f) that specifically precludes the application of any provision outside of § 15. However, § 15(b) of the ADEA authorizes the EEOC to establish "[r]easonable exemptions" for the executive branch upon determining that age is a BFOQ. The CAA does not state expressly whether the reference to § 15 makes subsection (b) of that section applicable, and, specifically, whether any BFOQs granted by the EEOC under § 15(b) would apply to employing offices, or whether the Board can exercise the authority of the EEOC under § 15(b) to issue BFOQs applicable to employing offices.	Sec. 9 *29 U.S.C. § 628*

AMERICANS WITH DISABILITIES ACT OF 1990 ("ADA")

TITLE I — EMPLOYMENT	
A. SUBSTANTIVE RIGHTS AND PROTECTIONS	
1. Employment discrimination against an individual employed by another employer. § 102(a) of the ADA forbids employment discrimination by covered employers against "a qualified individual with a disability." As discussed at page 1, row 1, above, courts have held that a Title VII provision forbidding discrimination against "any individual" extends, under certain circumstances, beyond the immediate employer-employee relationship, including where a defendant who does not employ an individual controls that individual's access to employment with another employer and denies access based on unlawful criteria. Under the CAA, an employing office may only be charged with discrimination by a "covered employee," defined as an employee of the nine legislative-branch employers listed in § 101(3).	Sec. 102(a) *42 U.S.C. § 12112(a)*
2. Coverage of unions. § 102 of the ADA forbids discrimination by unions in the private sector, and these provisions may be enforced against private-sector unions under § 107(a) of the ADA. The CAA does not make these provisions applicable to unions discriminating against legislative branch employees, because § 201 of the CAA only forbids discrimination in "personnel actions" and §§ 401-408 allow complaints only against employing offices. (Unlawful discrimination by a union may be an unfair labor practice under § 220 of the CAA, but the procedures and remedies under that section are very different from those under the ADA and under the CAA for violations of ADA rights and protections.) As noted at page 1, row 3, above, a similar situation exists in the executive branch, where § 717 of Title VII does not cover discrimination by unions against executive branch employees, but courts and the EEOC are divided as to whether the private-sector provisions of Title VII and 42 U.S.C. § 1981 apply by their own terms to such discrimination. Similarly differing views might be expressed with respect to whether the ADA applies by its own terms to forbid discrimination by unions against legislative-branch employees.	Secs. 102, 107(a) *42 U.S.C. §§ 12112, 12117(a)*
3. Consideration of political party, domicile, or political compatibility. Under the CAA, § 502 provides that consideration of political party, domicile, or political compatibility by Members, committees, or leadership offices shall not be a violation of § 201, which is the section that makes applicable the rights and protections of title I of the ADA. Under the ADA, there is no specific immunity for consideration of political party, domicile, or political compatibility.	Secs. 102-103 *42 U.S.C. § 12112-12113*
B. ENFORCEMENT	
AGENCY ENFORCEMENT AUTHORITIES	
4. Agency responsibility to investigate charges filed by an employee or Commission Member. The ADA requires the EEOC to investigate charges brought by an employee or by a Member of the Commission. The CAA neither references these provisions nor sets forth similar provisions authorizing agency investigation.	Sec. 107(a) *42 U.S.C. § 12117(a)*, *referencing* § 706(b) of Title VII, *42 U.S.C. § 2000e–5(b)*

5. Agency responsibility to determine "reasonable cause" and to "endeavor to eliminate" the violation by informal conciliation. The ADA requires that, upon the filing of a charge, the EEOC must determine whether "there is reasonable cause to believe that the charge is true" and "endeavor to eliminate any such alleged unlawful employment practice" by informal conference, conciliation, and persuasion. The CAA does not reference these provisions; it requires the mediation of allegations of discrimination and requires approval of settlements by the Executive Director, but does not require any person involved in the mediation or in approving the settlement to determine "reasonable cause" or to "endeavor to eliminate" the alleged discrimination.	. . . *referencing* § 706(b) of Title VII, *42 U.S.C. § 2000e–5(b)*
6. Agency authority to bring judicial enforcement actions. The ADA authorizes the EEOC to bring a civil action. The CAA neither references these provisions nor sets forth similar provisions authorizing an agency to bring enforcement proceedings.	. . . *referencing* § 706(f)(1) of Title VII, *42 U.S.C. § 2000e–5(f)(1)*
7. Agency authority to intervene in private civil action of general public importance. Under the ADA, the EEOC may intervene in a private action of general public importance. The CAA neither references these provisions nor sets forth similar provisions authorizing an agency to intervene in private actions.	. . . *referencing* § 706(f)(1) of Title VII, *42 U.S.C. § 2000e–5(f)(1)*
8. Agency authority to apply to court for enforcement of judicial orders. The ADA authorizes the EEOC to commence judicial proceedings to compel compliance with judicial orders. The CAA does not reference these provisions. § 407(a)(2) of the CAA enables the Office of Compliance to petition the Court of Appeals to enforce final orders of a hearing officer or the Board, but the CAA sets forth no provision enabling an agency to seek the enforcement of judicial orders.	. . . *referencing* § 706(i) of Title VII, *42 U.S.C. § 2000e–5(i)*
9. Grant of subpoena power and other general powers for investigations and hearings. The ADA grants the EEOC access to evidence, including subpoena powers, in support of its investigations and hearings. The CAA neither references these provisions nor sets forth similar provisions granting an agency investigatory powers. (§ 405(f) of the CAA grants subpoena powers to hearing officers, and § 408 authorizes civil actions in which courts may issue subpoenas, but these CAA provisions do not grant subpoena powers for use in agency investigation.)	. . . *referencing* §§ 709(a), 710 of Title VII, *42 U.S.C. §§ 2000e–8(a), 2000e–9*
10. Recordkeeping and reporting requirements. The ADA incorporates Title VII provisions requiring private-sector employers to make and preserve such records and make such reports therefrom as the EEOC shall prescribed by regulation or order, after public hearing, as reasonable, necessary, or appropriate for enforcement. EEOC regulations require that all personnel or employment records generally be preserved for 1 year and reserve the agency's right to impose special reporting requirements on individual employers or groups of employers. 29 C.F.R. § 1602.11. The CAA does not reference these provisions, and the Board, in issuing substantive regulations with respect to several other laws, found that recordkeeping and reporting requirements under those laws were not incorporated by the CAA.	. . . *referencing* § 709(c) of Title VII, *42 U.S.C. § 2000e–8(c)*

ADMINISTRATIVE AND JUDICIAL PROCEDURES AND REMEDIES	
11. Suing individuals as agent; possibility of individual liability. Because the definition of "employer" under the ADA includes any agent, a plaintiff may choose to sue the employer by naming an individual in the capacity of agent. Furthermore, as noted with respect to Title VII at page 3, row 12, above, while many recent cases hold that individuals may not be held individually liable in discrimination cases, some courts hold to the contrary and the issue remains unresolved. Under the CAA, individuals may be neither sued nor held individually liable, because only an employing office may be named as respondent or defendant under §§ 401-408 and all awards and settlements must generally be paid out of an account of the Office of Compliance under § 415(a).	Sec. 101(5)(A) *42 U.S.C. § 12111(5)(A)*
12. Enforceability of subpoenas for information or documents within the jurisdiction of the House or Senate. The ADA authorizes civil actions in which courts exercise their ordinary subpoena authority. The CAA also authorizes civil actions, as well as administrative adjudications, but such authorization is subject to § 413 of the CAA, by which the House and Senate decline to waive certain powers relating to records and information, as discussed in connection with Title VII at page 3, row 13, above.	Sec. 107(a) *42 U.S.C. § 12117(a)*, *referencing* § 706(f)(1) of Title VII, *42 U.S.C. § 2000e–5(f)(1)*
13. Appointment of counsel and waiver of fees. The ADA authorizes the court to appoint an attorney for the complainant in a private action and to waive costs. The CAA does not reference these provisions. In judicial proceedings under the CAA, the courts may exercise their general powers to authorize proceedings *in forma pauperis* and waive fees and costs and appoint counsel if a party is unable to pay. *See* 28 U.S.C. § 1915. In administrative proceedings under the CAA, there are no fees and costs to waive, but there is also no power to appoint counsel.	. . . *referencing* § 706(f)(1) of Title VII, *42 U.S.C. § 2000e–5(f)(1)*
14. Agency authority to apply for TRO or preliminary relief. § 107(a) of the ADA, which references § 706(f)(1) of Title VII, authorizes the EEOC to bring an action for a TRO or preliminary relief pending resolution of a charge. The CAA neither references § 107(a) of the ADA nor sets forth similar provisions authorizing TROs or preliminary relief, and the CAA does not allow a covered employee to commence an administrative complaint or civil action until after having completed periods of counseling and mediation and an additional period of at least 30 days.	. . . *referencing* § 706(f)(2) of Title VII, *42 U.S.C. § 2000e–5(f)(2)*
PUNITIVE DAMAGES	
15. Punitive damages. Punitive damages are available in cases of malice or reckless indifference brought under title I of the ADA. The CAA does not reference this provision, and § 225(c) of the CAA expressly precludes the awarding of punitive damages.	42 U.S.C. § 1981a(b)(1)

C. OTHER AGENCY AUTHORITIES	
16. Notice-posting requirements. The ADA requires employers, employment agencies, and unions and joint labor-management committees to post notices prepared or approved by the EEOC. The CAA does not reference these provisions, and the Board, in issuing substantive regulations with respect to several other laws, found that notice-posting requirements under those laws were not incorporated by the CAA.	Sec. 105 *42 U.S.C. § 12115*
17. Substantive rulemaking authority. Under § 106 of the ADA, the EEOC promulgates both procedural and substantive regulations. § 106 is not referenced by the CAA, and § 201, unlike most other sections of title II of the CAA, contains no requirement that the Board adopt implementing regulations. § 304 of the CAA, which establishes the process by which the Board adopts substantive regulations, specifies that such regulations "shall include regulations the Board is required to issue under title II," but does not state explicitly whether other regulations, which the Board is not required to issue, may be issued at the Board's discretion.	Sec. 106 *42 U.S.C. § 12116*
TITLE II — PUBLIC SERVICES	
ENFORCEMENT	
AGENCY ENFORCEMENT AUTHORITIES	
18. Agencies must investigate any alleged violation, even if not charged by a qualified person with a disability. Title II of the ADA affords the remedies, procedures, and rights set forth in § 505 of the Rehabilitation Act of 1973 to "any person alleging discrimination." The regulations of the Attorney General ("AG") implementing title II require that, if any "individual who believes that he or she or a specific class of individuals" has been subject to discrimination files a complaint, then the appropriate federal agency must investigate the complaint. 28 C.F.R. §§ 35.170(a), 35.172(a). Under the CAA, § 210(d)(1), (f) provides express authority for the General Counsel to investigate only when "[a] qualified person with a disability, . . . who alleges a violation[,] . . . file[s] a charge" and in "periodic inspections" that are "[o]n a regular basis, and at least once each Congress."	Sec. 203 *42 U.S.C. § 12133*, *referencing* § 505 of Rehabilitation Act of 1973, *29 U.S.C. § 794a*

19.	**Agencies must issue "Letter of Findings" and endeavor to "secure compliance by voluntary means."** Title II of the ADA affords the remedies, procedures, and rights of § 505 of the Rehabilitation Act, and § 505 incorporates the remedies, procedures and rights of titles VI and VII of the Civil Rights Act of 1964 ("CRA"). § 602 in title VI of the CRA provides that enforcement action may be taken only if the federal agency concerned "has determined that compliance cannot be secured by voluntary means." The AG's regulations implementing title II of the ADA require that the Federal agency investigating a compliant must issue a Letter of Findings, 28 C.F.R. § 35.172, and, if noncompliance is found, the agency must initiate negotiations "to secure voluntary compliance" and any compliance agreement must specify the action that will be taken "to come into compliance" and must "[p]rovide assurance that discrimination will not recur," 28 C.F.R. § 35.173. The CAA does not reference these provisions. Under the CAA, § 210(d)(2) authorizes the General Counsel to request mediation between the charging individual and the responsible entity, and the CAA requires approval of any settlement by the Executive Director. However, the General Counsel is specifically forbidden to participate in the mediation, and the CAA does not require any person involved in the mediation or in approving the settlement to make findings as to compliance or noncompliance or to endeavor "to secure voluntary compliance."	Sec. 203 *42 U.S.C. § 12133*, *referencing* § 602 of title VI of the CRA, *42 U.S.C. § 2000d–1*
20.	**Attorney General's authority to bring enforcement proceeding without a charge by a qualified person with a disability.** Under title II of the ADA and under regulations of the AG, if a federal agency receives a complaint from any individual who believes there has been discrimination and is unable to secure voluntary compliance, the agency may refer the matter to the AG for enforcement. 28 C.F.R. § 35.174; *see U.S. v. Denver*, 927 F. Supp. 1396, 1399-1400 (D. Col. 1996). Under the CAA, § 210(d)(3) authorizes the General Counsel to file an administrative complaint only after "[a] qualified person with a disability, . . . who alleges a violation[,] . . . file[s] a charge."	Sec. 203 *42 U.S.C. § 12133*
21.	**Attorney General's authority to bring enforcement action in federal district court.** The AG enforces against a violation of ADA title II by filing an action in federal district court. Under the CAA, § 210(d)(3) authorizes the General Counsel to enforce by filing an administrative complaint, but not by commencing an action in court.	Sec. 203 *42 U.S.C. § 12133*
	JUDICIAL PROCEDURES AND REMEDIES	
22.	**Private right of action.** Under title II of the ADA, both employees and non-employees of a public entity may sue a public entity for discrimination on the basis of disability. Under the CAA, non-covered-employees have no right to sue or bring administrative proceedings under § 210 or any other section of the CAA. (As discussed at page 16, row 23, below, covered employees may sue or bring administrative complaints under § 201 and §§ 401-408 of the CAA..)	Sec. 203 *42 U.S.C. § 12133*

23. Private right to sue immediately, without having exhausted administrative remedies. Both employees and non-employees of a non-federal public entity may sue under title II of the ADA immediately, regardless of whether administrative remedies have been exhausted.[2] Under the CAA, covered employees may not file an administrative complaint or commence a civil action until after having completed periods of counseling and mediation and an additional period of at least 30 days. (As discussed at page 15, row 22, above, non-covered-employees have no private right of action.)	Sec. 203 *42 U.S.C. § 12133*
DAMAGES	
24. Monetary damages. § 203 of the ADA incorporates the remedies of titles VI and VII of the CRA, as noted in page 15, row 19, above. Title VII does not provide for damages other than back pay under § 706(g)(1) in connection with hiring or reinstatement, but, under title VI, courts have inferred a private right to recover damages for an intentional violation. *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 70, 112 S.Ct. 1028, 1035 (1992). Under the CAA, § 210(c) incorporates the remedies under § 203 of the ADA. However, a court has held that the Federal Government is immune, under sovereign immunity principles, against the implied right to recover damages under title VI as incorporated by § 505 of the Rehabilitation Act. *Dorsey v. U.S. Dep't of Labor*, 41 F.3d 1551 (D.C. Cir. 1994).	Sec. 203 *42 U.S.C. § 12133*, *referencing* title VI and §§ 706(f)-(k), 716 of the CRA, *42 U.S.C. §§ 2000d* et seq.*, 2000e–5(f)-(k), 2000e–16.*
TITLE III — PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES	
ENFORCEMENT	
AGENCY ENFORCEMENT AUTHORITIES	
25. Attorney General may investigate whenever there is reason to believe there may be a violation, even if not charged by a qualified person with a disability. Title III of the ADA requires the AG to investigate alleged violations and to undertake periodic compliance reviews. The AG's regulations implementing title III specify that "[a]ny individual who believes that he or she or a specific class of persons" has been subject to discrimination may request an investigation, and that, whenever the AG "has reason to believe" there may be a violation, the AG may initiate a compliance review. 28 C.F.R. § 36.502. The CAA does not reference these provisions, and § 210(d)(1), (f) of the CAA provides express authority for the General Counsel to investigate only when "[a] qualified person with a disability, . . . who alleges a violation[,] . . . file[s] a charge" and in "periodic inspections" that are "[o]n a regular basis, and at least once each Congress."	Sec. 308(b)(1)(A)(i) *42 U.S.C. § 12188((b)(1)(A)(i)*

[2] *See Tyler v. Manhattan*, 857 F. Supp. 800, 812 (D. Kan. 1994); *Ethridge v. Alabama*, 847 F. Supp. 903, 907 (M.D. Ala. 1993); *Noland v. Wheatley*, 835 F. Supp. 476, 482 (N.D. Ind. 1993); *Petersen v. University of Wisconsin*, 818 F. Supp. 1276, 1279 (W.D. Wis. 1993); *Bledsoe v. Palm Beach County Soil and Water Conserv. Dist.*, 133 F.3d 816, 824 (11th Cir. 1998) (dictum).

26.	**Attorney General's authority to bring enforcement action without a charge by a qualified person with a disability.** Under title III of the ADA, if the AG has reasonable cause to believe that there is discrimination that constitutes a pattern or practice of discrimination or that raises an issue of general public importance, the AG may commence a civil action. These provisions are not referenced by the CAA. § 210(d)(3) of the CAA authorizes the General Counsel to file an administrative complaint only in response to a charge filed by a qualified person with a disability who alleges a violation.	Sec. 308(b)(1)(B) *42 U.S.C.* *§ 12188(b)(1)(B)*
27.	**Attorney General's authority to bring enforcement action in federal district court.** The AG brings enforcement actions, as noted at page 17, row 26, above, by filing an action in federal district court. These provisions are not referenced by the CAA. § 210(d)(3) of the CAA authorizes the General Counsel may bring an enforcement action by filing an administrative complaint, but not by commencing an action in court.	Sec. 308(b)(1)(B) *42 U.S.C.* *§ 12188(b)(1)(B)*
	JUDICIAL PROCEDURES AND REMEDIES	
28.	**Private right of action.** A private right of action is available for violations of title III of the ADA. The CAA neither references these provisions nor sets forth similar provisions establishing a private right to commence either an administrative or judicial proceedings.	Sec. 308(a) *42 U.S.C. § 12188(a)*
	DAMAGES AND PENALTIES	
29.	**Monetary damages.** § 308(b)(2)(B) of the ADA provides that, when the AG brings a civil action, he or she may ask the court to award monetary damages to the person aggrieved. The CAA does not reference § 308(b)(2)(B), but, rather, § 210(c) of the CAA references the remedies under §§ 203 and 308(a) of the ADA. § 203 of the ADA references the remedies of titles VI and VII of the CRA, as noted in row 19 above, and § 308(a) of the ADA references the remedies of title II of the CRA, 42 U.S.C. §§ 2000a–3(a). Neither title II nor title VII of the CRA provides for damages, other than back pay under § 706(g)(1) of title VII in connection with hiring or reinstatement. Courts have inferred a private right to recover damages under title VI of the CRA, but, as discussed at page 16, row 24, above, the Federal Government may be immune. Furthermore, the remedies of title VI of the CRA are referenced by § 203 of title II of the ADA, not by § 308(a) of title III of the ADA, and might therefore not be available for a violation of title III rights and protections as made applicable by § 210 of the CAA.	Sec. 308(b)(2)(B) *42 U.S.C.* *§ 12188(b)(2)(B)*
30.	**Civil penalties.** In a civil action brought by the Attorney General under title III of the ADA, the court may assess a civil penalty. The CAA does not reference this provision and § 225(c) of the CAA specifically disallows the assessment of civil penalties.	Sec. 308(b)(2)(C) *42 U.S.C.* *§ 12188(b)(2)(C)*

TITLE V — MISCELLANEOUS PROVISIONS	
SUBSTANTIVE RIGHTS AND PROTECTIONS	
31. Retaliation against employees of other employers. § 503 of the ADA protects "any individual" against retaliation for asserting, exercising, or enjoying rights under the ADA. Employers' obligations under this section are not expressly limited to their own employees, and, in the context of the retaliation provision in the OSHAct, the Labor Department has construed the term "any employee" to forbid employers to retaliate against employees of other employers, as discussed at page 32, row 1, below. § 503 is not referenced by the CAA, and § 207 of the CAA, which sets forth provisions prohibiting retaliation, applies by its terms to covered employees only.	Sec. 503 *42 U.S.C. § 12203*
32. Retaliation against non-employees exercising rights with respect to public entities or public accommodations. § 503 of the ADA protects any individual against retaliation for asserting, exercising, or enjoying rights under the ADA. Such individuals may include non-employees who exercise or enjoy rights with respect to public entities under title II of the ADA or public accommodations under title III of the ADA. § 503 is not referenced by the CAA, and § 207 of the CAA, which sets forth provisions establishing retaliation protection, applies by its terms to covered employees only.	Sec. 503 *42 U.S.C. § 12203*

FAMILY AND MEDICAL LEAVE ACT OF 1993 ("FMLA")

A. SUBSTANTIVE RIGHTS AND PROTECTIONS	
1. Duties owed by "secondary" employers to employees hired and paid by temp agencies and another "primary" employers. The FMLA defines "employer" to include any person "who acts, directly or indirectly, in the interest of an employer"; makes it unlawful for any employer to interfere with the exercise of FMLA rights; and forbids employers and other persons from retaliating against "any individual." The Labor Secretary, citing this statutory authority, promulgated regulations on "joint employment" that prohibit "secondary employers" from interfering with the exercise of FMLA rights by employees hired and paid by a "primary" employer, *e.g.*, by a temporary help or leasing agency. 29 C.F.R. § 825.106(f); 60 FED. REG. 2180, 2183 (Jan. 8, 1995). Under the CAA, individuals who are not employees of the nine legislative-branch employers in § 101(3) are outside the definition of "covered employee" and are not covered by family and medical leave protection under § 202(a) or by retaliation protection under § 207(a), regardless of whether an employing office would be considered the "secondary employer" within the meaning of the Labor Secretary's regulations. The Board, in promulgating its implementing regulations, stated specifically that employees of temporary and leasing agencies are not covered by the CAA. 142 CONG. REC. S196, S198 (daily ed. Jan. 22, 1996).	Secs. 101(4)(A)(ii)(I), 105(a)(1)-(2), (b) *29 U.S.C. §§ 2611(4)(A)(ii)(I), 2615(a)(1)-(2), (b)*
B. ENFORCEMENT	
AGENCY ENFORCEMENT AUTHORITIES	
2. Agency's general authority to investigate to ensure compliance, and responsibility to investigate complaints of violations. § 106(a) of the FMLA authorizes the Labor Secretary generally to make investigations to ensure compliance, and § 107(b)(1) specifically requires the Labor Secretary to receive, investigate, and attempt to resolve complaints of violations. The CAA neither references these provisions nor sets forth similar provisions authorizing an agency to conduct investigations.	Sec. 106(a), 107(b)(1) *29 U.S.C. §§ 2616(a), 2617(b)(1)*
3. Grant of subpoena and other investigatory powers. The FMLA grants the Labor Secretary subpoena and other investigatory powers for any investigations. The CAA neither references these provisions nor sets forth similar provisions granting an agency investigatory powers. (§ 405(f) of the CAA grants subpoena powers to hearing officers, and § 408 authorizes civil actions in which courts may issue subpoenas, but these CAA provisions do not grant subpoena powers for use in agency investigation.)	Sec. 106(a), (d) *29 U.S.C. § 2616(a), (d)*

4. Recordkeeping and reporting requirements. The FMLA requires private-sector employers to make and preserve records pertaining to compliance in accordance with § 11(c) of the FLSA and in accordance with regulations issued by the Labor Secretary. § 11(c) of the FLSA requires every employer to make and preserve such records and to make such reports therefrom as the Wage and Hour administrator shall prescribe by regulation or order. The Secretary's FMLA regulations specify the records regarding payroll, benefits, and FMLA leave and disputes that employers must maintain and preserve for 3 years, and indicate that employers must submit records specifically requested by a Departmental official and must prepare extensions or transcriptions of information in the records upon request. 29 C.F.R. § 825.500(a)-(b). The CAA does not reference these statutory provisions, and the Board, in adopting implementing regulations under § 202 of the CAA, found that the CAA explicitly did not make these requirements applicable.	Sec. 106(b)-(c) *29 U.S.C. § 2616(b)-(c), referencing* § 11(c) of the FLSA, *29 U.S.C. § 211(c)*
5. Agency authority to bring judicial enforcement actions. The FMLA authorizes the Labor Secretary to bring a civil action to recover damages, and grants the district courts jurisdiction, upon application of the Labor Secretary, to restrain violations and to award other equitable relief. The CAA neither references these provisions nor sets forth similar provisions authorizing an agency to bring enforcement proceedings.	Sec. 107(b)(2), (d) *29 U.S.C. § 2617(b)(2), (d)*
JUDICIAL PROCEDURES AND REMEDIES	
6. Individual liability. Because the definition of "employer" under the FMLA includes any person who "acts, directly or indirectly, in the interest of an employer," the weight of authority is that individuals may be held individually liable in an action under § 107 of the FMLA.[3] Under the CAA, individuals may not be held individually liable, because only an employing office may be named as respondent or defendant under §§ 401-408 and all awards and settlements must generally be paid out of an account of the Office of Compliance under § 415(a).	Secs. 101(4)(A)(ii)(I), 107 *29 U.S.C. §§ 2611(4)(A)(ii)(I), 2617*
7. Enforceability of subpoenas for information or documents within the jurisdiction of the House or Senate. The FMLA authorizes civil actions in which courts exercise their ordinary subpoena authority. The CAA also authorizes civil actions, as well as administrative adjudications, but such authorization is subject to § 413 of the CAA, by which the House and Senate decline to waive certain powers relating to records and information, as discussed in connection with Title VII at page 3, row 13, above.	Sec. 107(a)(2) *29 U.S.C. § 2617(a)(2)*

[3] *See Beyer v. Elkay Manufacturing Co.*, 1997 WL 587487 (N.D. Ill. Sept. 19, 1997) (No. 97-C-50067) (holding that the term "employer" in the FMLA should be construed the same as "employer" in the FLSA, which allows individual liability); *Knussman v. Maryland*, 935 F.Supp. 659, 664 (D. Md. 1996); *Johnson v. A.P. Products, Ltd.*, 934 F.Supp. 625 (S.D.N.Y. 1996); *Freeman v. Foley*, 911 F.Supp. 326, 330-32 (N.D. Ill. 1995); 29 C.F.R. § 825.104(d) (Labor Department regulations). *Contra Frizzell v. Southwest Motor Freight, Inc.*, 906 F.Supp. 441, 449 (E.D. Tenn. 1995) (holding that the term "employer" in FMLA should be construed the same as "employer" in Title VII, which does not allow individual liability).

8. Private right to sue immediately, without having exhausted administrative remedies. An employee who alleges an FMLA violation may choose to sue immediately, without exhausting any administrative remedies. The CAA allows a covered employee to file an administrative complaint or commence a civil action only after having completed periods of counseling and mediation and an additional period of at least 30 days.	Sec. 107(a) *29 U.S.C. § 2617(a)*
9. Two- or 3-year statute of limitations. A civil action may be brought under the FMLA within two years after the violation ordinarily, or, in the case of a willful violation, within three years. Proceedings under the CAA must be commenced within 180 days after the alleged violation.	Sec. 107(c) *29 U.S.C. § 2617(c)*
C. OTHER AGENCY AUTHORITIES	
10. Notice-posting requirements. The FMLA requires employers to post notices prepared or approved by the Labor Secretary, and establishes civil penalties for a violation. The CAA does not reference these provisions, and, in adopting implementing regulations, the Board found that the CAA explicitly did not incorporate these requirements.	Sec. 109 *29 U.S.C. § 2619*

FAIR LABOR STANDARDS ACT OF 1938 ("FLSA")

A. SUBSTANTIVE RIGHTS AND PROTECTIONS	
Prohibition against compensatory time off. Under the FLSA, employers generally may neither require nor allow employees to receive compensatory time off in lieu of overtime pay. § 203 of the CAA makes this prohibition generally applicable, but provisions of the CAA and other laws establish exceptions:	Sec. 7(a) *29 U.S.C. § 207(a)*
1. Coverage of Capitol Police officers. § 203(c)(4) of the CAA, as amended, allows Capitol Police officers to elect time off in lieu of overtime pay.	
2. Coverage of employees whose work schedules directly depend on the House and Senate schedules. § 203(c)(3) of the CAA requires the Board to issue regulations concerning overtime compensation for covered employees whose work schedule depends directly on the schedule of the House and Senate, and § 203(a)(3) provides that, under those regulations, employees may receive compensatory time off in lieu of overtime pay.	
3. Coverage of salaried employees of the Architect of the Capitol. 5 U.S.C. § 5543(b) provides that the Architect of the Capitol may grant salaried employees compensatory time off for overtime work. The CAA does not state expressly whether it repeals this authority.	
Interns are not covered. § 203(a)(2) of the CAA excludes "interns," as defined in regulations issued by the Board, from the coverage of all rights and protections of the FLSA:	
4. Minimum wage. Interns are excluded from coverage under the entitlement to the minimum wage.	Sec. 6(a) *29 U.S.C. § 206(a)*
5. Entitlement to overtime pay. Interns are excluded from coverage under the entitlement receive overtime pay.	Sec. 7(a) *29 U.S.C. § 207(a)*
6. Equal Pay Act provisions. Interns are excluded from coverage under Equal Pay provisions, prohibiting sex discrimination in the payment of wages.	Sec. 6(d) *29 U.S.C. § 206(d)*
7. Child labor protections. Interns are excluded from coverage under child labor protections.	Sec. 12(c) *29 U.S.C. § 212(c)*

8. Coverage of unions under Equal Pay provisions. The Equal Pay provisions at § 6(d)(2) of the FLSA forbid unions in the private-sector to cause or attempt to cause an employer to discriminate on the basis of sex in the payment of wages, and these provisions may be enforced against private-sector unions under § 16(b) of the FLSA. Under the CAA, § 203(a)(1) makes the rights and protections of § 6(d) of the FLSA applicable to covered employees, but no mechanism is expressly provided for enforcing these rights and protections against unions, because §§ 401-408 of the CAA allow complaints only against employing offices. (Unlawful discrimination by a union may be an unfair labor practice under § 220 of the CAA, but the procedures and remedies under that section are very different from those under the FLSA and under the CAA for violations of Equal Pay rights and protections.) As noted at page 1, row 3, above, a similar situation exists in the executive branch, where § 717 of Title VII does not cover discrimination by unions against executive branch employees, but courts and the EEOC are divided as to whether the private-sector provisions of Title VII and 42 U.S.C. § 1981 apply by their own terms to such discrimination. Similarly, differing views might be expressed with respect to whether §§ 6(d)(2) and 16(b) of the FLSA apply by their own terms to prohibit discrimination by unions against legislative-branch employees.	Secs. 6(d)(2), 16(b) *29 U.S.C. §§ 206(d), 216(b)*
9. Prohibition of retaliation by "persons," including unions, not acting as employers. § 15(a)(3) of the FLSA forbids retaliation by any "person" against an employee for exercising rights under the FLSA, and § 3(a) defines "person" broadly to include any "individual" and any "organized group of persons." This definition is broad enough to include a labor union, its officers, and members. *See Bowe v. Judson C. Burns, Inc.*, 137 F.2d 37 (3d Cir. 1943). The CAA does not reference § 15(a)(3) of the FLSA, and § 207 of the CAA forbids retaliation only by employing offices.	Sec. 15(a)(3) *29 U.S.C. § 215(a)(3)*
B. ENFORCEMENT	
AGENCY ENFORCEMENT AUTHORITIES	
10. Grant of subpoena and other powers for use in investigations and hearings. § 9 of the FLSA grants the Labor Secretary subpoena and other investigatory powers for use in investigations and hearings. The CAA neither references these provisions nor sets forth similar provisions granting an agency investigatory powers. (§ 405(f) of the CAA grants subpoena powers to hearing officers, and § 408 authorizes civil actions in which courts may issue subpoenas, but these CAA provisions do not grant subpoena powers for use in agency investigation.)	Sec. 9 *29 U.S.C. § 209*
11. Agency authority to investigate complaints of violations and to conduct agency initiated investigations. Under authority of § 11(a) of the FLSA, the Wage and Hour Division investigates complaints of violations and also conducts agency-initiated investigations. The CAA neither references these provisions nor sets forth similar provisions. authorizing agency investigation.	Sec. 11(a) *29 U.S.C. § 211(a)*

12.	**Recordkeeping and reporting requirements.** The FLSA requires employers in the private sector to make and preserve such records and to make such records therefrom as the Wage and Hour Administrator shall prescribe by regulation or order as necessary or appropriate for enforcement. Labor Department regulations specify the "payroll" and other records that must be preserved for at least 3 years and the "employment and earnings" records that must be preserved for at least 2 years, and require each employer to make "such extension, recomputation, or transcription" of required records, and to submit such reports concerning matters set forth in the records, as the Administrator may request in writing. 29 C.F.R. §§ 516.5 -516.8. As to the Equal Pay provisions, EEOC regulations require employers to keep records in accordance with The CAA does not reference these provisions, and, in adopting implementing regulations, the Board found that the CAA explicitly did not made these requirements applicable.	Sec. 11(c) *29 U.S.C. § 211(c)*
13.	**Agency authority to bring judicial enforcement actions.** The FLSA authorizes the Labor Secretary to bring an action in district court to recover unpaid minimum wages or overtime compensation, and an equal amount of liquidated damages, and civil penalties, as well as injunctive relief. The CAA neither references these provisions nor sets forth similar provisions authorizing an agency to bring enforcement proceedings.	Secs. 16(c), 17 *29 U.S.C. §§ 216(c), 217*
	JUDICIAL PROCEDURES AND REMEDIES	
14.	**Individual liability.** Because the definition of "employer" under the FLSA includes any person who "acts, directly or indirectly, in the interest of an employer," individuals may be held individually liable in an action under § 16(b) of the FLSA.[4] Under the CAA, individuals may not be held individually liable, because only an employing office may be named as respondent or defendant under §§ 401-408 and all awards and settlements must generally be paid out of an account of the Office of Compliance under § 415(a).	Secs. 3(d), 16(b) *29 U.S.C. §§ 203(d), 216(b)*
15.	**Private right to sue immediately, without having exhausted administrative remedies.** An employee who alleges an FLSA violation may sue immediately, without exhausting any administrative remedies. The CAA allows a covered employee to file an administrative complaint or commence a civil action only after having completed periods of counseling and mediation and an additional period of at least 30 days.	Sec. 16(b) *29 U.S.C. § 216(b)*
16.	**Enforceability of subpoenas for information or documents within the jurisdiction of the House or Senate.** The FLSA authorizes civil actions in which courts exercise their ordinary subpoena authority. The CAA also authorizes civil actions, as well as administrative adjudications, but such authorization is subject to § 413 of the CAA, by which the House and Senate decline to waive certain powers relating to records and information, as discussed in connection with Title VII at page 3, row 13, above.	Sec. 16 *29 U.S.C. § 216*

[4] *See, e.g., U.S. Dep't of Labor v. Cole Enterprises*, 62 F.3d 775, 778 (6th Cir. 1995); *Reich v. Circle C. Investments, Inc.*, 998 F.2d 324, 329 (5th Cir. 1993); *Brock v. Hamad*, 867 F.2d 804, 809 n.6 (4th Cir. 1989); *Riordan v. Kempiners*, 831 F.2d 690, 694-95 (7th Cir. 1987); *Donovan v. Agnew*, 712 F.2d 1509, 1511 (1st Cir. 1983).

17.	**Injunctive relief.** § 17 of the FLSA grants jurisdiction to the district courts, upon the complaint of the Labor Secretary, to restrain violations. The CAA neither references these provisions nor sets forth similar provisions authorizing an agency to seek injunctive relief or granting a court or other tribunal jurisdiction to grant it.	Sec. 17 *29 U.S.C. § 217*
18.	**Two- or 3-year statute of limitations.** A civil action under the FLSA may be brought within two years after the violation ordinarily, or, in the case of a willful violation, within three years. Proceedings under the CAA must be commenced within 180 days after the alleged violation.	Secs. 6-7 of the Portal-to-Portal Act ("PPA") *29 U.S.C. §§ 255-256*
19.	**Remedy for a child labor violation.** §§ 16(a), (e), and 17 of the FLSA provide for enforcement of child labor requirements through agency enforcement actions for civil penalties or injunction and by criminal prosecution. The CAA does not reference §§ 16(a), (e), or 17 of the FLSA. § 203(b) of the CAA references only the remedies of § 16(b) of the FLSA, and § 16(b) makes employers liable for: *(1)* damages if the employer violated minimum-wage or overtime requirements of the FLSA, and *(2)* legal or equitable relief if the employer violated the anti-retaliation requirements of the FLSA. The CAA thus does not expressly reference any FLSA provision establishing remedies for child labor violations.	Secs. 16(a), (e), 17 *29 U.S.C. §§ 216(a), (e), 217*
	LIQUIDATED DAMAGES; CIVIL AND CRIMINAL PENALTIES	
20.	**Criminal penalties.** The FLSA makes fines and imprisonment available for willful violations. The CAA neither references these provisions nor sets forth similar provisions imposing criminal penalties.	Sec. 16(a) *29 U.S.C. § 216(a)*
21.	**Liquidated damages for retaliation.** § 15(a)(3) of the FLSA prohibits discrimination against an employee for exercising FLSA rights, and § 16(b) provides that an employer who violates § 15(a)(3) is liable for legal or equitable relief and "an additional equal amount as liquidated damages." Under the CAA, § 203(b) incorporates the remedies of § 16(b) of the FLSA and explicitly includes "liquidated damages," but only "for a violation of subsection (a)," and § 203(a) does not reference § 15(a)(3) of the FLSA or otherwise prohibit retaliation. Retaliation is prohibited by § 207(a) of the CAA, but the remedy under § 207(b) is "such legal or equitable remedy as may be appropriate," with no express authority to award liquidated damages.	Sec. 16(b) *29 U.S.C. § 216(b)*
22.	**Civil penalties.** The FLSA authorizes the Labor Secretary or the court to assess civil penalties for child labor violations or for repeated or willful violations of the minimum wage or overtime requirements. The CAA does not reference these provisions, and § 225(c) of the CAA expressly precludes the awarding of civil penalties under the CAA.	Sec. 16(e) *29 U.S.C. § 216(e)*

C. OTHER AGENCY AUTHORITIES	
23. Agency issuance of interpretative bulletins. The Wage and Hour Administrator has issued a number of interpretative bulletins and advisory opinions, and § 10 of the PPA, 29 U.S.C. § 259, in establishing a defense for good-faith reliance, refers to the "written administrative regulation, order, ruling, approval, or interpretation" of the Administrator. Under the CAA, in adopting regulations implementing § 203, the Board stated that the Wage and Hour Division's legal basis and practical ability to issue interpretive bulletins and advisory opinions arises from its investigatory and enforcement authorities, and that, absent such authorities, "it seems unwise, if not legally improper, for the Board to set forth its views on interpretive ambiguities in the regulations outside of the adjudicatory context of individual cases," and, further, that the Board "would in the exercise of its considered judgment decline to provide authoritative opinions" as part of its education and information programs. 142 CONG. REC. S221, S222-S223 (daily ed. Jan. 22, 1996).	Secs. 9, 11, 16-17 *29 U.S.C. § 209, 211, 216-217*
24. Requirements to post notices. Although the FLSA does not expressly require the posting of notices, the Labor Secretary promulgated regulations requiring employers to post notices informing employees of their rights. 29 C.F.R. § 516.4. In so doing, the Secretary relied on authority under § 11, which deals generally with the collection of information. 29 C.F.R. part 516 (statement of statutory authority). In adopting implementing regulations, the Board found that the CAA explicitly did not incorporate these notice-posting requirements.	Sec. 11 *29 U.S.C. § 211*

EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988 ("EPPA")

A. SUBSTANTIVE RIGHTS AND PROTECTIONS	
1. Coverage of Capitol Police. The EPPA applies to any employer in commerce, with no exception for private-sector police forces. Under the CAA, § 204(a)(3) authorizes the Capitol Police to use lie detectors in accordance with regulations issued by the Board under § 204(c), and the Board's regulations exempt the Capitol Police from EPPA requirements with respect to Capitol Police employees.	Secs. 2(1)-(2), 3(1)-(3), 7 *29 U.S.C. §§ 2001(1)-(2), 2002(1)-(3), 2006*
B. ENFORCEMENT	
AGENCY ENFORCEMENT AUTHORITIES	
2. Authority to make investigations and inspections. The EPPA authorizes the Labor Secretary to make investigations and inspections. The CAA neither references these provisions nor sets forth similar provisions authorizing investigations or inspections by an agency.	Sec. 5(a)(3) 29 U.S.C. § 2004(a)(3)
3. Recordkeeping requirements. The EPPA authorizes the Labor Secretary to require the keeping of records necessary or appropriate for the administration of the Act. Labor Department regulations specify the records regarding any polygraph use that employers and examiners must maintain and preserve for 3 years. 29 C.F.R. § 801.30. The CAA does not reference these provisions, and, in adopting implementing regulations, the Board found that the CAA explicitly did not make these requirements applicable.	Sec. 5(a)(3) *29 U.S.C. § 2004(a)(3)*
4. Grant of subpoena and other powers for investigations and hearings. The EPPA grants the Labor Secretary subpoena and other investigatory powers for use in investigations and hearings. The CAA neither references these provisions nor sets forth similar provisions granting an agency investigatory powers. (§ 405(f) of the CAA grants subpoena powers to hearing officers, and § 408 authorizes civil actions in which courts may issue subpoenas, but these CAA authorities do not grant subpoena powers for use in agency investigation.)	Sec. 5(b) *29 U.S.C. § 2004(b)*
5. Agency authority to bring judicial enforcement actions. The EPPA authorizes the Labor Secretary to bring an action in district court to restrain violations or for other legal or equitable relief. The CAA neither references these provisions nor sets forth similar provisions authorizing an agency to bring enforcement proceedings.	Sec. 6(a)-(b) *29 U.S.C. § 2005(a)-(b)*
JUDICIAL PROCEDURES AND REMEDIES	
6. Individual liability. The definition of "employer" under the EPPA includes any person who "acts, directly or indirectly, in the interest of an employer." This definition is substantially the same as that in the FLSA and the FMLA. As discussed in connection with these laws at page 20, row 6, and page 24, row 14, above, individuals may be held individually liable under the FLSA, and, by the weight of authority, under the FMLA. Under the CAA, individuals may not be held individually liable, because only an employing office may be named as respondent or defendant under §§ 401-408 of the CAA and all awards and settlements must generally be paid out of an account of the Office of Compliance under § 415(a).	Secs. 2(2), 6 *29 U.S.C. §§ 2001(2), 2005*

EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988 ("EPPA") (continued)

7. Enforceability of subpoenas for information or documents within the jurisdiction of the House or Senate. The EPPA authorizes civil actions in which courts exercise their ordinary subpoena authority. The CAA also authorizes civil actions, as well as administrative adjudications, but such authorization is subject to § 413 of the CAA, by which the House and Senate decline to waive certain powers relating to records and information, as discussed in connection with Title VII at page 3, row 13, above.	Sec. 6(c)(2) *29 U.S.C. § 2005(c)(2)*
8. Private right to sue immediately, without having exhausted administrative remedies. An employee who alleges an EPPA violation may sue immediately, without having exhausted any administrative remedies. The CAA allows a covered employee to file an administrative complaint or commence a civil action only after having completed periods of counseling and mediation and an additional period of at least 30 days.	Sec. 6(c)(2) *29 U.S.C. § 2005(c)(2)*
9. Three-year statute of limitations. A civil action under the EPPA may be brought within three years after the alleged violation. Proceedings under the CAA must be commenced within 180 days after the alleged violation.	Sec. 6(c)(2) *29 U.S.C. § 2005(c)(2)*
CIVIL PENALTIES	
10. Civil penalties. The EPPA authorizes the assessment by the Labor Secretary of civil penalties for violations. The CAA does not reference these provisions, and § 225(c) of the CAA expressly precludes the awarding of civil penalties under the CAA.	Sec. 6(a) *29 U.S.C. § 2005(a)*
C. OTHER AGENCY AUTHORITIES	
11. Requirement to post notices. The EPPA requires employers to post notices prepared and distributed by the Labor Secretary. The CAA does not reference these provisions, and, in adopting implementing regulations, the Board found that the CAA explicitly did not incorporate these requirements.	Sec. 4 *29 U.S.C. § 2003*

WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT ("WARN Act")

A. SUBSTANTIVE RIGHTS AND PROTECTIONS	
1. Notification of state and local governments. The WARN Act requires the employer to notify not only affected employees, but also the state dislocated worker unit and the chief elected official of local government. Although § 205(a)(1) of the CAA references § 3 of the WARN Act for the purpose of incorporating the "meaning" of office closure and mass layoff, that section of the CAA sets forth provisions requiring notification of employees, but not of state and local governments.	Secs. 3(a), 5(a)(3) *29 U.S.C. §§ 2102(a), 2104(a)(3)*
B. ENFORCEMENT	
JUDICIAL PROCEDURES AND REMEDIES	
2. Representative of employees may bring civil action. The WARN Act allows a representative of employees to sue to enforce liability. The CAA does not reference these provisions, and §§ 401-408 of the CAA provide only for the commencement or proceedings by covered employees.	Sec. 5(a)(5) *29 U.S.C. § 2104(a)(5)*
3. Unit of local government may bring civil action. The WARN Act allows a unit of local government to sue to enforce liability. The CAA does not reference these provisions, and §§ 401-408 of the CAA provide only for the commencement or proceedings by covered employees.	Sec. 5(a)(5) *29 U.S.C. § 2104(a)(5)*
4. Private right to sue immediately, without having exhausted administrative remedies. An employee, union, or local government that alleges a WARN Act violation may sue immediately, without exhausting any administrative remedies. The CAA allows a covered employee to file an administrative complaint or commence a civil action only after having completed periods of counseling and mediation and an additional period of at least 30 days.	Sec. 5(a)(5) *29 U.S.C. § 2104(a)(5)*
5. Limitations period borrowed from state law. The WARN Act does not provide a limitations period for the civil actions authorized by § 5, and the Supreme Court has held that limitations periods borrowed from state law should be applied to WARN Act claims. *North Star Steel Co. v. Thomas*, 515 U.S. 29, 115 S.Ct. 1927 (1995). Courts have generally applied state limitations periods to WARN Act claims ranging between one and six years. *See id.*; 29 U.S.C.A. § 2104 notes of decisions (Note 17 – Limitations) (1997 suppl. pamphlet). Under the CAA, proceedings must be commenced within 180 days after the alleged violation.	Sec. 5(a)(5) *29 U.S.C. § 2104(a)(5)*

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 ("USERRA")

ENFORCEMENT	
AGENCY ENFORCEMENT AUTHORITIES	
1. Agency authority to bring judicial enforcement action. Under USERRA, if a private-sector employee files a complaint with the Labor Secretary, and if the Labor Secretary refers the complaint to the Attorney General, the Attorney General may commence an action in court on behalf of the employee. However, while the USERRA provisions establishing substantive rights and protections generally extend, by their own terms, to the legislative branch, the Attorney General's authority under USERRA does not. Furthermore, the CAA neither references the Attorney General's authority under the USERRA nor sets forth similar provisions authorizing an agency to bring enforcement proceedings.	38 U.S.C. § 4323(a)(1)
2. Grant of subpoena and other investigatory powers. Under USERRA, the Labor Secretary may receive and investigate complaints from private-sector employees, and may issue enforceable subpoenas in carrying out such an investigation. However, while the USERRA provisions authorizing the Secretary to receive and investigate complaints extend, by their own terms, to the legislative branch, the Secretary's power to issue subpoenas does not. Furthermore, the CAA neither references the Secretary's authority and powers under USERRA nor sets forth provisions granting an agency investigatory authority and powers. (§ 405(f) of the CAA grants subpoena powers to hearing officers, and § 408 authorizes civil actions in which courts may issue subpoenas, but these CAA authorities do not grant subpoena powers for use in agency investigation.)	38 U.S.C. § 4326(b)-(d)
JUDICIAL PROCEDURES AND REMEDIES	
3. Individual liability. Because 38 U.S.C. § 4303(4)(A)(1) defines an "employer" in the private sector to include a "person . . . to whom the employer has delegated the performance of employment-related responsibilities," two courts have held that individuals may be held individually liable in an action under 38 U.S.C. § 4323. *Jones v. Wolf Camera, Inc.*, Civ. A. No. 3:96-CV-2578-D, 1997 WL 22678, at *2 (N.D. Tex., Jan. 10, 1997); *Novak v. Mackintosh*, 919 F.Supp. 870, 878 (D.S.D. 1996). However, the USERRA provisions that authorize civil actions and damages do not, by their own terms, extend to the legislative branch. Under the CAA, while § 206(b) authorizes damages, individuals may not be held individually liable, because only an employing office may be named as respondent or defendant under §§ 401-408 of the CAA and all awards and settlements must generally be paid out of an account of the Office of Compliance under § 415(a) of the CAA.	38 U.S.C. §§ 4303(4)(A)(1), 4323

4. Private right to sue immediately, without having exhausted administrative remedies. A private-sector employee alleging a USERRA violation may sue immediately, without exhausting any administrative remedies. However, USERRA does not, by its own terms, entitle legislative branch employees to either file an administrative complaint or commence a civil action. Under the CAA, a covered employee may file an administrative complaint or commence a civil action, but only after having completed periods of counseling and mediation and an additional period of at least 30 days.	38 U.S.C. § 4323(a)(2), (b)
5. Enforceability of subpoenas for information or documents within the jurisdiction of the House or Senate. USERRA authorizes civil actions against private-sector employees in which courts exercise their ordinary subpoena authority. As noted in row 4 above, USERRA does not, by its own terms, entitle legislative branch employees to either file an administrative complaint or commence a civil action. The CAA does authorize civil actions, as well as administrative adjudications, but such authorization is subject to § 413 of the CAA, by which the House and Senate decline to waive certain powers relating to records and information, as discussed in connection with Title VII at page 3, row 13, above.	38 U.S.C. § 4323(a)(2), (b)
6. Four-year statute of limitation. USERRA states that no state statute of limitations shall apply, but otherwise provides no statute of limitations. Under 28 U.S.C. § 1658, statutes like USERRA enacted after December 1, 1990, have a 4-year statute of limitations unless otherwise provided by law. As noted in row 4 above, USERRA does not entitle legislative branch employees to either file an administrative complaint or commence a civil action. Under the CAA, proceedings must be commenced within 180 days after the alleged violation.	38 U.S.C. § 4323(c)(6)
DAMAGES	
7. Liquidated damages. Under USERRA, 38 U.S.C. § 4323(c)(1)(A)(iii) grants the district courts jurisdiction to require a private-sector employer to pay not only compensatory damages, but also an equal amount of liquidated damages. This provision does not, by its own terms, extend to the legislative branch. Under the CAA, § 206(b) provides that the remedy for a violation of § 206(a) of the CAA shall include such remedy as would be appropriate if awarded under 38 U.S.C. § 4323(c)(1). However, the CAA does not state specifically whether the liquidated damages authorized by subparagraph (A)(iii) of § 4323(c)(1) are included among the remedies incorporated by § 206(a). By contrast, in the two other instances where a law made generally applicable by the CAA provides for liquidated damages, the CAA states specifically that the liquidated damages are incorporated. *See* § 201(b)(2)(B) of the CAA (authorizing the award of "such liquidated damages as would be appropriate if awarded under section 7(b) of [the ADEA]"); § 203(b) of the CAA (authorizing the award of "such remedy, including liquidated damages, as would be appropriate if awarded under section 16(b) of the [FLSA]").	38 U.S.C. § 4323(c)(1)(A)(iii)

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 ("OSHAct")

A. SUBSTANTIVE RIGHTS AND PROTECTIONS	
1. Employers may not retaliate against employees of other employers. § 11(c) of the OSHAct forbids retaliation against "any employee" for exercising rights under the OSHAct, and Labor Department regulations state that "because section 11(c) speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator." 29 C.F.R. § 1977.5(b). Under the CAA, an employing office may be charged with retaliation under § 207 only by a "covered employee," defined as an employee of the nine legislative-branch employers listed in § 101(3).	Sec. 11(c) *29 U.S.C. § 660(c)*
2. Unions and other "persons" not acting as employers may not retaliate. § 11(c) of the OSHAct forbids retaliation against an employee by any "person," and § 3(4) defines "person" broadly to include "one or more individuals" or "any organized group of persons." Regulations of the Labor Secretary explain: "A person may be chargeable with discriminatory action against an employee of another person. § 11(c) would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee." 29 C.F.R. § 1977.5(b). Under the CAA, § 207 forbids retaliation only by an employing office.	Secs. 3(4), 11(c) *29 U.S.C. §§ 652(4), 660(c)*
B. ENFORCEMENT	
AGENCY ENFORCEMENT AUTHORITIES	
3. Authority to conduct *ad hoc* inspections without a formal request by an employing office or covered employee. § 8(a) of the OSHAct authorizes the Labor Secretary to conduct inspections in the private sector at any reasonable times. Under the CAA, § 215(c)(1), (e)(1) references § 8(a) of the OSHAct, but only for the purpose of authorizing the General Counsel to exercise the Secretary's authority in making inspections. However, § 215(c)(1), (e) only provides express authority to inspect "[u]pon written request of any employing office or covered employee" or in "periodic inspections" that are "[o]n a regular basis, and at least once each Congress."	Sec. 8(a) *29 U.S.C. § 657(a)*
4. Grant of investigatory powers. The OSHAct empowers the Labor Secretary, in conducting an inspection or investigation, to compel the production of evidence under oath. The CAA neither references § 8(b) nor sets forth similar provisions granting compulsory process in the context of inspections and investigations. (§ 405(f) of the CAA grants subpoena powers to hearing officers, but these CAA authorities do not grant subpoena powers for use in agency inspection or investigation.)	Sec. 8(b) *29 U.S.C. § 657(b)*

5. Authority to require recordkeeping and reporting of general work-related injuries and illnesses. The OSHAct requires employers to make and preserve such records as the Labor Secretary, in consultation with the HHS Secretary, may prescribe by regulation as necessary or appropriate for enforcement, and to file such reports as the Secretary may prescribe by regulation. Employers must also maintain records and make periodic reports on work-related deaths, injuries, and illnesses, and maintain records of employee exposure to toxic materials. The CAA does not reference these provisions, and the Board, in adopting implementing regulations, determined that these requirements were not made applicable by the CAA. 143 CONG. REC. S64 (Jan. 7, 1997). However, the Board did incorporate into its regulations several employee-notification requirements with respect to particular hazards that are contained in specific Labor Department standards.	Secs. 8(c), 24(e) *29 U.S.C. §§ 657(c), 673(e)*
6. Agency enforcement of the prohibition against retaliation. Under the OSHAct, an employee who has suffered retaliation may file a complaint with the Labor Secretary, who shall conduct an investigation and, if there was a violation, shall sue in district court. The CAA does not reference these provisions and no provision of the CAA sets forth similar provisions authorizing an agency to investigate a complaint of retaliation or to bring an enforcement proceeding.	Sec. 11(c)(2) *29 U.S.C. § 660(c)(2)*
ADMINISTRATIVE AND JUDICIAL PROCEDURES AND REMEDIES	
7. Individual liability for retaliation. Because § 11(c) of the OSHAct forbids retaliation by "any person," an employee's officer responsible for retaliation may be sued and, in appropriate circumstances, be held liable. *See Donovan v. Diplomat Envelope Corp.*, 587 F. Supp. 1417, 1425 (E.D.N.Y. 1984) ("We cannot rule out the possibility that damages might under some circumstances be appropriately imposed upon an employer's officer responsible for a discriminatory discharge.") The CAA does not reference § 11(c) of the OSHAct, and individuals may be neither sued nor held liable under the CAA because § 207 forbids retaliation only by an employing office, only an employing office may be named as respondent or defendant under §§ 401-408, and all awards and settlements must generally be paid out of an account of the Office of Compliance under § 415(a).	Sec. 11(c) *29 U.S.C. § 660(c)*
8. Employer's burden to contest a citation within 15 days. The OSHAct provides that the employer has the burden of contesting a citation within 15 days, or else the citation becomes final and unreviewable. The CAA does not reference these provisions, and § 215(c)(3) of the CAA places the burden of initiating proceedings on the General Counsel.	Sec. 10(a) *29 U.S.C. § 659(a)*
9. Employees' right to challenge the abatement period. The OSHAct gives employees or their representatives the right to challenge, in an adjudicatory hearing, the period of time fixed in a citation for the abatement of a violation. The CAA neither references these provisions nor sets forth similar provisions establishing a process by which employees or their representatives may challenge the abatement period.	Sec. 10(c) *29 U.S.C. § 659(c)*

10.	**Employees' right to participate as parties in hearings on citations.** The OSHAct gives affected employees or their representatives the right to participate as parties in hearings on a citation. The CAA neither references these provisions nor sets forth similar provisions allowing employees or their representatives to participate as parties.	Sec. 10(c) *29 U.S.C. § 659(c)*
11.	**Employees' right to take appeal from administrative orders on citations.** The OSHAct gives "any person adversely affected or aggrieved" by an order on a citation the right to appeal to the U.S. Courts of Appeals. The CAA does not reference these provisions, and § 215 (c)(3), (5) sets forth authority for the employing office and the General Counsel to bring or participate in administrative or judicial appeals on a citation only.	Sec. 11(a) *29 U.S.C. § 660(a)*
12.	**Enforceability of subpoenas for information or documents within the jurisdiction of the House or Senate.** The OSHAct grants subpoena power to the Occupational Safety and Health Review Commission, which holds adjudicatory hearings under the OSHAct. The CAA also authorizes administrative adjudications, but such authorization is subject to § 413 of the CAA, by which the House and Senate decline to waive certain powers relating to records and information, as discussed in connection with Title VII at page 3, row 13, above.	Sec. 12(h)-(i) *29 U.S.C. § 661(h)-(i)*
13.	**Court jurisdiction, upon petition of the agency, to restrain imminent danger.** § 13(a) of the OSHAct grants jurisdiction to the district courts, upon petition of the Labor Secretary, to restrain an imminent danger. Under the CAA, § 215(b) references § 13(a) of the OSHAct to the extent of providing that "the remedy for a violation" shall be "an order to correct the violation, including such order as would be appropriate if issued under section 13(a)." However, the only process set forth in the CAA for the granting of remedies is the citation procedure under §§ 215(c)(2)-(3) and 405, culminating when the hearing officer issues a written decision that shall "order such remedies as are appropriate pursuant to title II [of the CAA]." Thus, the CAA does not expressly grant jurisdiction to courts to issue restraining orders authorized under § 215(b) and does not expressly authorize the General Counsel to petition for such restraining orders. However, § 4.12 of the Procedural Rules of the Office of Compliance states that, if the General Counsel's designee concludes that an imminent danger exists, "he or she shall inform the affected employees and the employing offices . . . that he or she is recommending the filing of a petition to restrain such conditions or practices . . . in accordance with section 13(a) of the OSHAct, as applied by section 215(b) of the CAA."	Sec. 13(a) *29 U.S.C. § 662*
14.	**Employees' right to sue for mandamus compelling the Labor Secretary to seek a restraining order against an imminent danger.** The OSHAct gives employees at risk or their representatives the right to sue for a writ of mandamus to compel the Secretary to seek a restraining order and for further appropriate relief. The CAA neither references these provisions nor sets forth similar provisions authorizing employees or their representatives to seek to compel an agency to act.	Sec. 13(d) *29 U.S.C. § 662(d)*

CIVIL AND CRIMINAL PENALTIES	
15. Civil penalties for violation. Civil penalties may be assessed for violations of the OSHAct, graded in terms of seriousness and willfulness of the violation. The CAA does not reference these provisions, and § 225(c) of the CAA specifically precludes the awarding of civil penalties.	Sec. 17(a)-(d), (i)-(*l*) *29 U.S.C. § 666(a)-(d), (i)-(l)*
16. Criminal penalties for willful violation causing death. Under the OSHAct, fines and imprisonment may be imposed for a willful violation causing death. The CAA neither references these provisions nor sets forth similar provisions imposing criminal penalties.	Sec. 17(e) *29 U.S.C. § 666(e)*
17. Criminal penalties for giving unauthorized advance notice of inspection. Under the OSHAct, fines and imprisonment may be imposed for giving unauthorized advance notice of an inspection. The CAA does not reference these provisions or otherwise provide for criminal penalties. § 4.06 of the Procedural Rules of the Office of Compliance forbids giving advance notice of inspections except as authorized by the General Counsel in specified circumstances, but applicable penalties are not specified.	Sec. 17(f) *29 U.S.C. § 666(f)*
18. Criminal penalties for knowingly making false statements. Under the OSHAct, fines and imprisonment may be imposed for knowingly making false statements in any application, record, or report under the OSHAct. The CAA neither references these provisions nor sets forth similar provisions imposing criminal penalties.	Sec. 17(g) *29 U.S.C. § 666(g)*
C. OTHER AGENCY AUTHORITIES	
19. Requirement that citations be posted. § 9(b) of the OSHAct requires that each citation be posted at or near the place of violation, as prescribed by "regulations issued by the Secretary." The Secretary may enforce this requirement under §§ 9 and 17 of the OSHAct, which include authority to issue citations and to assess or seek civil and criminal penalties for a violation of any "regulations prescribed pursuant to" the OSHAct. Under the CAA, § 215(c)(2) references § 9 of the OSHAct, but only to the extent of granting the General Counsel the authorities of the Secretary "to issue" a citation or notice, and the CAA does not expressly state whether the employing office has a duty to post the citation. § 4.13 of the Procedural Rules of the Office of Compliance directs employing offices to post citations, but the Procedural Rules are issued under § 303 of the CAA, which authorizes the adoption of rules governing "the procedures of the Office [of Compliance]." Furthermore, as to whether a requirement to post citations is enforceable under the CAA, the only enforcement mechanism stated in § 215 is set forth in subsection (c)(2), which authorizes the General Counsel to issue citations "to any employing office responsible for correcting a violation of subsection (a)"; but subsection (a) does not expressly reference either § 9(b) of the OSHAct or the Office's Procedural Rules.	Sec. 9(b) *29 U.S.C. § 658(b)*